

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re EpiPen ERISA Litigation

Court File No. 17-cv-1884 (PAM/HB)

JOINT MOTION REGARDING CONTINUED SEALING

Pursuant to Local Rule 5.6(c), documents have been filed under temporary seal in connection with the following motions:

- Plaintiffs' Motion to Compel CVS Defendants Responses to Plaintiffs' Request for Production of Documents and Interrogatories [Doc. No. 407]; and
- Plaintiffs' Motion to Compel Defendant Express Scripts' Responses to Plaintiffs' Request for Production of Documents and Interrogatories [Doc. No. 413].

Pursuant to Local Rule 5.6(d), the parties submit this Joint Motion Regarding Continued Sealing.

DKT. NO.	DKT NO. OF REDACTED DOCUMENT (IF FILED)	DESCRIPTION OF DOCUMENT	PRECISELY IDENTIFY: a) The information that the parties agree should remain sealed; b) The information the parties agree should be unsealed; and c) The information about which the parties disagree.	NONPARTY THAT DESIGNATED DOC. CONFIDENTIAL (IF ANY)	REASON WHY DOCUMENT SHOULD REMAIN SEALED OR BE UNSEALED
409	410	Unredacted copy of Memorandum of Law in Support of Plaintiffs' Motion to Compel Discovery from the CVS Defendants	Plaintiffs and Defendants CVS Health Corporation, CaremarkPCS Health, L.L.C., Caremark, L.L.C., and Caremark Rx, L.L.C. (collectively "CVS Caremark Defendants") do not oppose unsealing.	Mylan designated some of the underlying documents as Highly Confidential	

415	416	Unredacted copy of Memorandum of Law in Support of Plaintiffs' Motion to Compel Discovery from the Express Scripts Defendants	Defendants Express Scripts Inc., Express Scripts Holding Co., and Medco Health Solutions, Inc. (collectively "Express Scripts") assert that the redacted portions of the brief should remain under seal. Because Express Scripts and Mylan are the designating parties, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.	Mylan designated some of the underlying documents as Highly Confidential	Express Scripts asserts that redacted portions of the brief contain references or quotations to limited excerpts of non-public, highly competitive, proprietary and/or commercially sensitive information contained in documents that have been marked Highly Confidential pursuant to the Protective Order [Doc. No. 249]. In addition, some of the underlying documents referred to or quoted were designated as Highly Confidential by non-party Mylan.
418-1	Public Version filed at 417-7	MYERISA-00073906 (Ex. H to Obrist Decl.)	The Parties agree this document was sealed in error and a public version was filed with non-party		

			Mylan's permission.		
418-2		MYERISA-00059330 (Ex. I to Obrist Decl.)	<p>The CVS Caremark Defendants assert that the entire document should remain under seal because it was designated as confidential by a third party in its entirety and it was filed in connection with a discovery motion rather than a dispositive motion, so the public's interest in the document is limited.</p> <p>Because Mylan is the designating party, Plaintiffs take no position on whether this document should remain under seal</p>	Mylan designated as Highly Confidential	The CVS Caremark Defendants assert that the document contains non-public information and that the third party which produced the document, Mylan, has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249].

			<p>pursuant to Rule 5.6. Plaintiffs contend that the blanket designation of documents as under seal, including boilerplate language and whole documents, is inconsistent with the prior order regarding sealing entered in this action. <i>See</i> ECF No. 195.</p>		
418-3		MYERISA-00073627 (Ex. J to Obrist Decl.)	<p>The CVS Caremark Defendants assert that the entire document should remain under seal because it was designated as confidential by a third party in its entirety and it was filed in connection with a</p>	<p>Mylan designated as Highly Confidential</p>	<p>The CVS Caremark Defendants assert that the document contains non-public information and that the third party which produced the document, Mylan, has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249].</p>

			<p>discovery motion rather than a dispositive motion, so the public's interest in the document is limited.</p> <p>Because Mylan is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6. Plaintiffs contend that the blanket designation of documents as under seal, including boilerplate language and whole documents, is inconsistent with the prior order regarding sealing entered in</p>		
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			this action. <i>See</i> ECF No. 195.		
418-4		MYERISA-00073632 (Ex. K to Obrist Decl.)	<p>The CVS Caremark Defendants assert that the entire document should remain under seal because it was designated as confidential by a third party in its entirety and it was filed in connection with a discovery motion rather than a dispositive motion, so the public's interest in the document is limited.</p> <p>Because Mylan is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule</p>	Mylan designated as Highly Confidential	The CVS Caremark Defendants assert that the document contains non-public information and that the third party which produced the document, Mylan, has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249].

			5.6. Plaintiffs contend that the blanket designation of documents as under seal, including boilerplate language and whole documents, is inconsistent with the prior order regarding sealing entered in this action. <i>See</i> ECF No. 195.		
418-5 (filed in error); 424 (refiled)	450-3	ESI Defendants' Objections and Responses to Plaintiffs' First Set of Requests for Production to All Defendants, served January 11, 2019 (Ex. L to Obrist Decl.)	Express Scripts asserts that the redacted portions of the document should remain under seal. Because Express Scripts is the designating party, Plaintiffs take no position on whether this document should remain under seal		Express Scripts asserts that the redacted portions of the document contains non-public, highly competitive, proprietary and/or commercially sensitive information. Express Scripts has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249].

			pursuant to Rule 5.6		
418-6	450	ESI Defendants' Objections and Responses to Plaintiffs' First Set of Interrogatories to All Defendants, served January 18, 2019 (Ex. R to Obrist Decl.)	Express Scripts asserts that the redacted portions of the document should remain under seal. Because Express Scripts is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.		Express Scripts asserts that the redacted portions of the document contains non-public, highly competitive, proprietary and/or commercially sensitive information. Express Scripts has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249].
418-7		MYERISA-00008505 (Ex. T to Obrist Decl.)	Express Scripts asserts that the entire document should remain under seal because, in addition to the reasons outlined in the last column, the entire document is confidential, it	Mylan designated as Highly Confidential	Express Scripts asserts that the document contains non-public, highly competitive, proprietary and/or commercially sensitive information and contractual terms between Express Scripts and Mylan, as well as Mylan and its other clients. Express Scripts has designated the document as Highly

			<p>was designated as confidential by a third party, and it was filed in connection with a discovery motion rather than a dispositive motion, so the public's interest in the document is limited. Because Express Scripts and Mylan are the designating parties, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6. Plaintiffs contend that the blanket designation of documents as under seal, including boilerplate language and whole documents,</p>		<p>Confidential pursuant to the Protective Order [Doc. No. 249]. In addition, the document was designated as Highly Confidential by non-party Mylan.</p>
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			is inconsistent with the prior order regarding sealing entered in this action. <i>See</i> ECF No. 195.		
418-8		MYERISA-00016801 (Ex. V to Obrist Decl.)	Express Scripts asserts that the entire document should remain under seal because, in addition to the reasons outlined in the last column, the entire document is confidential, it was designated as confidential by a third party, and it was filed in connection with a discovery motion rather than a dispositive motion, so the public's interest in the document is limited. Because	Mylan designated as Highly Confidential	Express Scripts asserts that the document contains non-public, highly competitive, proprietary and/or commercially sensitive information and contractual terms between Express Scripts and Mylan. Express Scripts has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249]. In addition, the document was designated as Highly Confidential by non-party Mylan.

			Express Scripts and Mylan are the designating parties, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6. Plaintiffs contend that the blanket designation of documents as under seal, including boilerplate language and whole documents, is inconsistent with the prior order regarding sealing entered in this action. <i>See</i> ECF No. 195.		
418-9	450-1	ES_000050041 (Ex. W to Obrist Decl.)	Express Scripts asserts that the redacted portions of the document should remain		Express Scripts asserts that the document contains non-public, highly competitive, proprietary and/or commercially

			<p>under seal. Because Express Scripts is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>		<p>sensitive information. Express Scripts has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249].</p>
418-10		MYERISA-00038194 (Ex. X to Obrist Decl.)	<p>Express Scripts asserts that the entire document should remain under seal because, in addition to the reasons outlined in the last column, the entire document is confidential, it was designated as confidential by a third party, and it was filed in connection with a discovery motion rather than a</p>	<p>Mylan designated as Highly Confidential</p>	<p>Express Scripts asserts that the document contains non-public, highly competitive, proprietary and/or commercially sensitive information and contractual terms between Express Scripts and Mylan. Express Scripts has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249]. In addition, the document was designated as Highly Confidential by non-party Mylan.</p>

			<p>dispositive motion, so the public's interest in the document is limited. Because Express Scripts and Mylan are the designating parties, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6. Plaintiffs contend that the blanket designation of documents as under seal, including boilerplate language and whole documents, is inconsistent with the prior order regarding sealing entered in this action. <i>See</i> ECF No. 195.</p>		
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418-11		MYERISA-00018796 (Ex. Y to Obrist Decl.)	Express Scripts asserts that the entire document should remain under seal because, in addition to the reasons outlined in the last column, the entire document is confidential, it was designated as confidential by a third party, and it was filed in connection with a discovery motion rather than a dispositive motion, so the public's interest in the document is limited. Because Express Scripts and Mylan are the designating parties, Plaintiffs take no position on whether this document should	Mylan designated as Highly Confidential	Express Scripts asserts that the document contains non-public, highly competitive, proprietary and/or commercially sensitive information and contractual terms between Express Scripts and Mylan. Express Scripts has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249]. In addition, the document was designated as Highly Confidential by non-party Mylan.
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			<p>remain under seal pursuant to Rule 5.6. Plaintiffs contend that the blanket designation of documents as under seal, including boilerplate language and whole documents, is inconsistent with the prior order regarding sealing entered in this action. <i>See</i> ECF No. 195.</p>		
418-12		MYERISA-00018798 (Ex. Z to Obrist Decl.)	<p>Express Scripts asserts that the entire document should remain under seal because, in addition to the reasons outlined in the last column, the entire document is confidential, it</p>	<p>Mylan designated as Highly Confidential</p>	<p>Express Scripts asserts that the document contains non-public, highly competitive, proprietary and/or commercially sensitive information and contractual terms between Express Scripts and Mylan. Express Scripts has designated the document as Highly Confidential pursuant to the Protective</p>

			<p>was designated as confidential by a third party, and it was filed in connection with a discovery motion rather than a dispositive motion, so the public's interest in the document is limited. Because Express Scripts and Mylan are the designating parties, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6. Plaintiffs contend that the blanket designation of documents as under seal, including boilerplate language and whole documents,</p>		<p>Order [Doc. No. 249]. In addition, the document was designated as Highly Confidential by non-party Mylan.</p>
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			is inconsistent with the prior order regarding sealing entered in this action. <i>See</i> ECF No. 195.		
418-13	450-2	ES_000103916 (Ex. AA to Obrist Decl.)	Express Scripts asserts that the redacted portions of the document should remain under seal. Because Express Scripts is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.		Express Scripts asserts that the document contains non-public, highly competitive, proprietary and/or commercially sensitive information. Express Scripts has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249].
420-1	421-1	Unredacted copy of CVS Defendants' Objections and Responses to Plaintiffs' First Set of Interrogatories to All Defendants, served January 18,	Plaintiffs and the CVS Caremark Defendants do not oppose unsealing.		

		2019 (Ex. C to Obrist Decl.)			
427	428	Unredacted copy of Defendants Express Scripts, Inc., Express Scripts Holding Co., and Medco Health Solutions, Inc.'s Memorandum of Law in Opposition to Plaintiffs' Motion to Compel Discovery	Express Scripts asserts that the redacted portions of the document should remain under seal. Because Express Scripts is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.	Mylan designated some of the underlying documents as Highly Confidential	Express Scripts asserts that redacted portions of the brief contain references or quotations to limited excerpts of non-public, highly competitive, proprietary and/or commercially sensitive information contained in documents that have been marked Highly Confidential pursuant to the Protective Order [Doc. No. 249]. In addition, some of the underlying documents referred to or quoted were designated as Highly Confidential by non-party Mylan.
432-1	433-1	Unredacted copy of ES_0000030231 (Ex. 1 to Cooper Decl.)	Express Scripts asserts that the redacted portions of the document should remain under seal. Because Express Scripts is the designating party,		Express Scripts asserts that the document contains non-public, highly competitive, proprietary and/or commercially sensitive information. Express Scripts has designated the document as Highly Confidential

			Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.		pursuant to the Protective Order [Doc. No. 249].
432-2	433-2	Unredacted copy of Supplemental Objections and Responses of Defendants Express Scripts Holding Company, Express Scripts, Inc., and Medco Health Solutions, Inc., to Interrogatory No. 3 (Ex. 2 to Cooper Decl.)	Express Scripts asserts that the redacted portions of the document should remain under seal. Because Express Scripts is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.		Express Scripts asserts that the document contains non-public, highly competitive, proprietary and/or commercially sensitive information. Express Scripts has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249].
432-3		ES_000138538—ES_000138544 (Ex. 4 to Cooper Decl.)	Express Scripts asserts that the entire document should remain under seal because, in addition to the		Express Scripts asserts that the document contains non-public, commercially sensitive information. Express Scripts has designated the document as Highly

			reasons outlined in the last column, the entire document is confidential and it was filed in connection with a discovery motion rather than a dispositive motion, so the public's interest in the document is limited. Because Express Scripts is the designating party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6. Plaintiffs contend that the blanket designation of documents as under seal, including boilerplate language and		Confidential pursuant to the Protective Order [Doc. No. 249].
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			whole documents, is inconsistent with the prior order regarding sealing entered in this action. <i>See</i> ECF No. 195.		
432-4		ES_000138545— ES_000138547 (Ex. 5 to Cooper Decl.)	Express Scripts asserts that the entire document should remain under seal because, in addition to the reasons outlined in the last column, the entire document is confidential and it was filed in connection with a discovery motion rather than a dispositive motion, so the public's interest in the document is limited. Because Express Scripts is the designating		Express Scripts asserts that the document contains non-public, commercially sensitive information. Express Scripts has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249].

			party, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6. Plaintiffs contend that the blanket designation of documents as under seal, including boilerplate language and whole documents, is inconsistent with the prior order regarding sealing entered in this action. <i>See</i> ECF No. 195.		
432-5		MYERISA-00044723 (Ex. 7 to Cooper Decl.)	Express Scripts asserts that the entire document should remain under seal because, in addition to the reasons outlined	Mylan designated as Confidential	Express Scripts asserts that the document contains non-public, highly competitive, proprietary and/or commercially sensitive information. Express Scripts has designated the document as

			<p>in the last column, the entire document is confidential, it was designated as confidential by a third party, and it was filed in connection with a discovery motion rather than a dispositive motion, so the public's interest in the document is limited. Because Express Scripts and Mylan are the designating parties, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6. Plaintiffs contend that the blanket designation of documents as under seal,</p>		<p>Highly Confidential pursuant to the Protective Order [Doc. No. 249]. In addition, the document was designated as Confidential by non-party Mylan.</p>
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			including boilerplate language and whole documents, is inconsistent with the prior order regarding sealing entered in this action. <i>See</i> ECF No. 195.		
432-6		ES_000012994 (Ex. 8 to Cooper Decl.)	Express Scripts asserts that the entire document should remain under seal because, in addition to the reasons outlined in the last column, the entire document is confidential, it was designated as confidential by a third party, and it was filed in connection with a discovery motion rather than a dispositive	Mylan designated the same document as Highly Confidential. <i>See</i> MYERISA-00048935.	Express Scripts asserts that the document contains non-public, highly competitive, proprietary and/or commercially sensitive information and contractual terms between Express Scripts and Mylan. Express Scripts has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249]. In addition, the same document was designated as Confidential by non-party Mylan at MYERISA-00048935.

			<p>motion, so the public's interest in the document is limited. Because Express Scripts and Mylan are the designating parties, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6.</p>		
432-7		MYERISA-00023823 (Ex. 9 to Cooper Decl.)	<p>Express Scripts asserts that the entire document should remain under seal because, in addition to the reasons outlined in the last column, the entire document is confidential, it was designated as confidential by a third party, and it was filed in</p>	<p>Mylan designated as Highly Confidential</p>	<p>Express Scripts asserts that the document contains non-public, highly competitive, proprietary and/or commercially sensitive information. Express Scripts has designated the document as Highly Confidential pursuant to the Protective Order [Doc. No. 249]. In addition, the document was designated as Highly Confidential by non-party Mylan.</p>

			connection with a discovery motion rather than a dispositive motion, so the public's interest in the document is limited. Because Express Scripts and Mylan are the designating parties, Plaintiffs take no position on whether this document should remain under seal pursuant to Rule 5.6. Plaintiffs contend that the blanket designation of documents as under seal, including boilerplate language and whole documents, is inconsistent with the prior order regarding sealing entered in		
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			this action. <i>See</i> ECF No. 195.		
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Dated July 19, 2019

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Dated: July 19, 2019

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